

FIFTH INTERIM AGREEMENT WITH THE  
NORTHERN COLORADO WATER CONSERVANCY DISTRICT,  
NORTHERN INTEGRATED SUPPLY PROJECT WATER ACTIVITY ENTERPRISE,  
FOR PARTICIPATION IN THE  
NORTHERN INTEGRATED SUPPLY PROJECT

This Agreement is made and entered into as of \_\_\_\_\_, 2010, by and between the Northern Colorado Water Conservancy District (a quasi-municipal entity and political subdivision of the State of Colorado), acting by and through its Northern Integrated Supply Project Water Activity Enterprise (a government-owned business within the meaning of Article X, Section 20(2)(d), of the Colorado Constitution, organized pursuant to C.R.S. §§ 37-45.1-101 et seq.), whose address is 220 Water Avenue, Berthoud, Colorado 80513 (the "NISP Enterprise"), and the Town of Frederick, whose address is P.O. Box 435, Frederick, Colorado 80530-0435 ("Participant").

Recitals

- A. The NISP Enterprise is developing a water project (the "Project") for the purpose of developing a new reliable water supply for the beneficial use of the Participant and other entities.
- B. Overall Project costs will be divided among the entities that participate in the Project.
- C. The First Phase of the Project consisted of preliminary studies to evaluate potential Poudre reservoir sites and the South Platte Water Conservation Project. The First Phase has been accomplished and there appear to be potential project configurations that may serve the needs of the Project.
- D. The Second Phase of the Project consisted of additional reservoir site evaluations, alternatives analysis, environmental studies, financial analyses, and related work. The Second Phase has been completed and the participants have selected alternatives that may serve the needs of the Project.
- E. The NISP Enterprise has commenced the Third Phase of the Project. The Third Phase, Years 1 and 2 (2004 and 2005), consisted of agency consultation, commencement of permitting with the U.S. Army Corps of Engineers and other agencies, commencement of compliance with the National Environmental Policy Act and other requirements for federal permitting, commencement of field work and analysis for permitting, modeling, and other activities related to designing and permitting the Project.
- F. The Third Phase, Year 3 through Year 6 (2006, 2007, 2008, and 2009), consisted of continuation of agency consultation, permitting with the U.S. Army Corps of Engineers and other agencies, compliance with the National Environmental Policy Act and other requirements for federal permitting, field work and analysis for permitting, modeling, and other activities related to designing and permitting the Project.

- G. The Third Phase, Years 7 through 9 (hereinafter referred to as "Phase 3A"), will consist of further agency consultation, permitting with the U.S. Army Corps of Engineers and other agencies, compliance with the National Environmental Policy Act and other requirements for federal permitting, field work and analysis for permitting, modeling, and other activities related to designing and permitting the Project.
- H. It is necessary that the NISP Enterprise pursue Phase 3A of the Project at this time in order to be able to complete the Project on the time schedule desired by the participants.
- I. Continuation and completion of the Third Phase of the Project on behalf of the participants will require continued funding from the participants.

#### Agreement

1. Participant agrees to participate in Phase 3A of the Project to continue agency consultation, permitting with the U.S. Army Corps of Engineers and other agencies, compliance with the National Environmental Policy Act and other requirements for federal permitting, field work and analysis for permitting, modeling, and other activities related to designing and permitting the Project, under and pursuant to the terms and conditions of this Agreement. A description of Phase 3A is included in Exhibit A. Participation in Phase 3A of the Project in no way obligates Participant to subsequent phases of the Project or to continue involvement in the Project in any manner.
2. For the purposes of cost allocation in Phase 3A, the cost is based upon the Participant's base requested capacity divided by the total requested base Project yield. The Participant's initial base requested capacity in the Project is 2,600 acre-feet of water yield. Attached hereto as Exhibit B is a table showing the current permitted capacity in the Project and the pro rata share of the costs of Phase 3A of the Project for 2010 for each participant. The Participant may request a reduction, but not an increase, in base requested capacity, which will be implemented by the NISP Enterprise so long as any increased costs of design, environmental studies, permitting or other matters are paid by the Participant. If a reduction in Participant's base requested capacity is made, the formula for allocation of costs among the participants shall be changed accordingly so that all participants bear a pro rata share of the Fourth Phase costs of the Project after the change based on their final base requested capacity. For purposes of the environmental analysis for the Project, the Participant's permitted capacity in the Project is 2,600 acre-feet of water yield. In the event that Participant's base requested capacity is increased or decreased, Participant's permitted capacity shall be increased or decreased in the same percentage as the percentage increase or decrease of the base requested capacity.
3. Participant agrees to provide to the NISP Enterprise funds for its pro-rata share of the anticipated 2010 costs necessary for Phase 3A of the Project. The NISP Enterprise estimates that Participant's pro rata share of the costs of Phase 3A of the Project is \$97,500 for 2010. Participant will pay the NISP Enterprise its pro rata share of Phase 3A 2010 costs on or before January 15, 2010. These estimated costs will not be increased or

exceeded without the prior written approval of Participant. However, if Phase 3A of the Project cannot be completed within these estimated costs, the NISP Enterprise is not obligated to complete Phase 3A of the Project for the benefit of Participant unless sufficient additional pro rata funds as determined by the NISP Enterprise are provided by Participant. Any participant which joins the Project after this Agreement is executed and is not listed in Exhibit B will be charged the same cost per acre foot of Project yield for the Third Phase as all other participants. Participant funds that are not expended during Phase 3A will be rebated back to each participant pro rata based on each participant's contribution of funds to the Project in Phase 3A.

4. In the event that Participant fails to make the payment set forth above at the specified time, the NISP Enterprise shall have the right to terminate this Agreement and cease all work on the Project for the benefit of Participant. The NISP Enterprise shall give Participant thirty (30) days' advance written notice of its intention to terminate this Agreement and cease work on the Project for Participant's benefit under this paragraph. Participant shall have until the end of said 30-day period in which to make all past due payments in full in order to cure its default hereunder. Participant shall in any event be responsible for its pro rata share of the 2010 costs of Phase 3A of the Project actually incurred by the NISP Enterprise up to the date of termination of this Agreement.
5. The NISP Enterprise agrees to diligently pursue Phase 3A of the Project in good faith to the extent that funds therefore are provided by the Participant under this Agreement and by other participants under similar agreements. By entering into this Agreement and accepting payments from Participant, the NISP Enterprise does not obligate itself to, nor does the NISP Enterprise warrant, that it will proceed with the Project beyond Phase 3A or that it will construct or operate the Project. At the end of the Third Phase, the NISP Enterprise will determine after consultation with the participants whether to proceed with the Project. The NISP Enterprise agrees that, if the participants provide all required funding, if the NISP Enterprise has the ability, and if the Project is feasible and practical, it will pursue the construction and operation of the Project if requested to do so by sufficient participants to fully fund the Project. In the event that the NISP Enterprise decides not to proceed with the Project, it will so notify Participant and this Agreement will immediately and automatically terminate upon the giving of such notice.
6. In the event of termination of the Project, Participant shall not be entitled to any return of funds paid to the NISP Enterprise for the Project, unless payments by participants exceed the NISP Enterprise's costs, in which case a pro rata refund will be made. In the event of such termination, Participant shall be entitled to receive copies of any work products developed by the NISP Enterprise or its consultants on behalf of Participant, and NISP Enterprise shall convey to Participant, as a tenant in common with all other participants who have not been terminated under paragraph 4 above, a pro rata interest in all real and personal property acquired by the NISP Enterprise for the Project with funds provided under this Agreement or similar agreements with other participants.
7. Participant shall have the right to assign this Agreement and Participant's rights hereunder, with the written consent of the NISP Enterprise, which consent shall not be

unreasonably withheld, to any person or entity that is eligible to receive water deliverable through the Project and that is financially able to perform this Agreement.

8. In the event that this Agreement is terminated for any reason, Participant shall not be entitled to any return of any funds paid to the NISP Enterprise for the Project, and the NISP Enterprise shall have no further obligations to Participant, except as provided in Paragraphs 3 and 6 above for those participants who have not been terminated under paragraph 4 above.
9. Notwithstanding any other provision of this Agreement to the contrary, the Participant's maximum financial obligation under this Agreement shall be the payment of \$97,500 set forth in paragraph 3 above. The Participant shall have the right to terminate this Agreement at any time. In the event of such termination, each of the parties hereto shall be immediately released from all obligations recited herein as if this Agreement had not been entered into, except that Participant shall be entitled to a return of funds paid to the NISP Enterprise as provided in paragraph 8 above.
10. In the event that additional costs must be incurred for Phase 3A in 2011 or 2012, the parties may amend this Agreement in writing to provide for further payment by Participant of Phase 3A costs for 2011 or 2012. However, Participant is not obligated under this Agreement to pay any costs for Phase 3A beyond the costs stated in paragraph 3 above.
11. This Agreement is the entire agreement between the NISP Enterprise and Participant regarding participation in Phase 3A of the Project and shall be modified by the parties only by a duly executed written instrument approved by Participant and the NISP Enterprise's Board of Directors.
12. This Agreement is subject to approval by the NISP Enterprise's Board of Directors and shall become binding on the NISP Enterprise only upon such approval.

TOWN OF FREDERICK

NORTHERN COLORADO WATER  
CONSERVANCY DISTRICT, ACTING  
BY AND THROUGH THE NORTHERN  
INTEGRATED SUPPLY PROJECT  
WATER ACTIVITY ENTERPRISE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT A  
DESCRIPTION OF PHASE 3A  
NORTHERN INTEGRATED SUPPLY PROJECT

Phase 3A consists of a continuation of the permitting work associated with NISP. The work in 2010 will largely be preparation of both the technical reports in support of the Supplemental Draft EIS as well as addressing public comments made on the Draft EIS. Additionally, there will be work in support of the public information effort for NISP as well as overall Northern Water administration and legal support.

EXHIBIT B  
PARTICIPANT YIELD AND COSTS  
PHASE 3A

***Participant Cost Allocation For 2010 Permitting \$1,500,000 Request***

Participant	Project Yield (Acre-feet)	Percent of Project	Additional Budget Request
Central Weld Co. W.D.	3,500	8.75%	\$ 131,250
Dacono	1,000	2.50%	\$ 37,500
Firestone	1,300	3.25%	\$ 48,750
Frederick	2,600	6.50%	\$ 97,500
Eaton	1,300	3.25%	\$ 48,750
Erie	6,500	16.25%	\$ 243,750
Evans	1,600	4.00%	\$ 60,000
Fort Collins-Loveland. W.D.	3,000	7.50%	\$ 112,500
Fort Lupton	3,000	7.50%	\$ 112,500
Fort Morgan	3,600	9.00%	\$ 135,000
Lafayette	1,800	4.50%	\$ 67,500
Lefthand W.D.	4,900	12.25%	\$ 183,750
Morgan County Q.W.D.	1,300	3.25%	\$ 48,750
Severance	1,300	3.25%	\$ 48,750
Windsor	3,300	8.25%	\$ 123,750
	40,000	100.00%	\$ 1,500,000